

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4300 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

JAGDISHBHAI SHAMJIBHAI GOHEL

Versus

STATE OF GUJARAT

Appearance:

MR SV RAJU for Petitioner
MR MUKESH PATEL, AGP for Respondent No. 1
MR JD AJMERA for Respondent No. 2
M/S MG DOSHIT & CO for Respondent No. 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 25/02/2000

ORAL JUDGEMENT

The petitioner was employed as an Assistant Teacher in a primary school in Bhavnagar District in the year 1975. The school came to be closed in June, 1980. The petitioner's services, therefore, came to be

terminated. The petitioner filed Regular Civil Suit No. 193/84 alongwith another teacher Manuben Bhavsinh Gohel and the matter was compromised in the Lok Adalat, but respondent No. 2 was the only defendant. In the consent terms, respondent No. 2 agreed that he will recommend the case of the petitioner and co-plaintiff Manuben B. Gohel before the Director of Education. Respondent No. 2, therefore, recommended the case of the petitioner as well as other plaintiff to respondent No. 3 Director of Primary Education for absorption in a Municipal school. However, respondent No. 3 rejected the request on 5.10.1985 (Annexure "C" to the petition) stating that the petitioner as well as the other plaintiff did not fulfill the criteria laid down by the State Government in the Government Resolution dated 19.12.1979. Hence, the representation of the petitioner and the other plaintiff was not accepted. It is against the aforesaid communication that the petitioner has filed this petition.

2. The Government Resolution dated 19.12.1979 (Annexure "H2") clearly provided that when primary schools are closed down, the teachers who are being rendered surplus will be appointed on priority basis in the public primary schools being run by the District Primary Education Committees/Municipal Corporation if such teachers who were in service on 1.1.1977 had put atleast three years continuous service and were qualified for appointment as primary teachers and were also trained teachers. The resolution empowered the Director of Primary Education to relax the upper age limit by 10 years. It was also clarified that the services rendered in the primary schools shall not be taken into consideration and such teachers shall be treated as fresh recruits and will be paid salary from the stage of minimum of the scale.

3. The petitioner does not dispute the fact that he is not a trained teacher. For primary teachers, the requisite training is "PTC". The only argument urged in this petition is that certain untrained teachers were absorbed and, therefore, the petitioner has been denied the right of equality by not absorbing the petitioner in the primary school run by the Bhavnagar Municipal Corporation. Illustration of one Kamalaben Bhagat has been given in letter dated 19.7.1980 (Annexure I - Pg. 22). Similarly, the illustration of three teachers, viz. Hasuben M. Delhiwala, Hansaben R. Madalia, and Kusumben R. Astik who had been taken in service vide Administrative Officer's Order dated 17.9.1987 (Annexure I) is given. It is further alleged that the petitioner's

co-plaintiff Manuben B. Gohel has also been absorbed by the respondents in a public primary school run by the Bhavnagar Municipal Corporation.

On the basis of the aforesaid instances, it is contended that the petitioner has been meted out discriminatory and arbitrary treatment by not absorbing the petitioner as a primary teacher in a public primary school. It is the petitioner's own case that as per the circular dated 7.9.1977 over and above the teachers possessing the PTC qualification, there are a few other categories of teachers who are also to be treated as trained primary teachers if they have certificate of other examination like DTEC examination or Teachers Diploma in Needle Craft and tailoring Course in Women-Children's Garments, etc.

4. There is nothing on record to show that the aforesaid 5 lady teachers whose names are given in the petition did not possess any other qualification to render themselves as ineligible for being treated as trained teachers. Moreover, as per the settled legal position, even if the respondents had committed any wrong in a few such case, it would not entitle the petitioner to claim that the petitioner should be treated as a trained teacher and absorbed in a public primary school although the petitioner does not have any training certificate such as PTC course.

5. Mr Khogje for the petitioner, however, submits that the petitioner has already averred in para 6 of the petition that the petitioner was teaching in standards 5, 6 and 7 in English subjects and the petitioner was not sent for training by the school and, therefore, as per the circular dated 7.9.1977 (col. 6), the petitioner is entitled to be treated as a trained primary teacher. In the Government Circular dated 7.9.1977, it is provided that for the purpose of absorption "trained teachers" would mean teachers possessing educational qualification with experience as primary teacher and teachers possessing the qualification of PTC or the other following qualifications which would also make them eligible for being treated as trained teachers.

1. Trained graduate candidates who were
employed as teachers in primary school on
17.1.1976
2. Teachers teaching subjects in Standards
5, 6 and 7 and possessing certificate of
SSC + one or more of the following
requirements :-

- (i) The certificate course conducted
by the Gujarat Vidyapith or old
SSC.
- (ii) DTEC Examination
- (iii) Certificate of Physical
Education.
- (iv) Teachers Diploma in Needle Craft
or Tailoring Course in
Women-Children's Garments.
- (v) Sangeet Visharad or equivalent
certificate awarded by a Govt.
recognized institution.
- (vi) Untrained teachers who were not
given an opportunity by the
Management of the Private Primary
schools for being sent for
training.

6. The petitioner claims that his case falls in the last category of untrained teachers who were not given an opportunity for being sent for training by the concerned school management.

7. Examination of the aforesaid claim would require detailed factual inquiry. The learned counsel for the petitioner submits that the assertion made by the petitioner in para 6 of the petition is not disputed. However, only the State Government, Administrative Officer, District Primary Education Committee and Director of Education are party respondents in these proceedings. Only the school management would be in a position to state as to whether the petitioner was or was not given any opportunity for being sent for training. In absence of the school management and in view of the fact that the school came to be closed down in the year 1980, it would be too late for the petitioner to claim that such inquiry should be held now. In this view of the matter also, the contention of the petitioner cannot be accepted and this Court is not inclined to permit the petitioner to agitate this issue in these proceedings under Article 226 of the Constitution. Mr Khogje for the petitioner, however submits that since the petitioner is not being granted any relief on the ground that the petitioner's claim requires detailed inquiry, the petitioner may be permitted to make a representation to the authorities to satisfy them that the petitioner can be given the benefit under the circular dated 7.9.1977 on the ground that the petitioner's case falls in one of the categories covered by the said circular.

8. In view of the above, it is clarified that, without entering into the validity of appointment of five teachers and without giving any opportunity of second innings of challenge in further litigation, in case the petitioner makes such representation within three months from today, the same may be considered by the authorities in accordance with law. The Court has granted this liberty to the petitioner only in view of the fact that the petitioner had earlier filed a suit which was placed before the Lok Adalat and the Administrative Officer had agreed to recommend the case of the petitioner to the Director of Primary Education, which promise the Administrative Officer had carried out and it yielded no result on the ground that the petitioner was not a trained teacher and, therefore, he was not entitled for absorption. Everything would, therefore, depend on such inquiry whether the petitioner's case falls within any of the categories specified in the circular dated 7.9.1977.

9. Subject to the aforesaid liberty, the petition is disposed of. Rule is discharged.

February 25, 2000 (M.S. Shah, J.)
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